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09/528,846	03/20/2000	Doug Turner	013.0078	5404

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EXAMINER

PARTON, KEVIN S

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/528,846

Applicant(s)

TURNER ET AL.

Examiner

Kevin Parton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Response to Arguments**

1. Applicant argues "The new claim language simply makes express what was already implicit in the claims as originally filed and therefore does not and is not intended to limit or otherwise restrict the present invention" (page 9, paragraph 2). The argument is not persuasive because the amended claims include two specific limitations that were not clear in the original claim as rejected in the previous office action. First, the previous claims did not specify that the download process must be independent of user intervention. Second, it was not specified that the download process must be solely dependent upon the operating state of the machine. These new limitations necessitated the new grounds of rejection stated below.
2. Applicant further argues "Perlman simply discloses a mechanism for taking advantage of the time period when the PC user is a "captive audience" to display advertisement and the like downloaded when the PC is idle. This teaching does not overcome the deficiencies discussed above that exist in Bodin et al's disclosure vis-à-vis the present invention" (page 16, paragraph 2). The argument is not persuasive because the Perlman reference shows downloading decisions being made in response to the operating state of the receiving machine (PC is idle). It is used in combination with Bodin et al. (USPN 6,061,733) in the previous action and again in the new grounds of rejection below.
3. Applicant's further arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

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***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4-6, and 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodin et al. (USPN 6,061,733) in view of Perlman (USPN 6,237,039).

6. Regarding claim 1, Bodin et al. (USPN 6,061,733) teach a system for downloading portions of a remotely located network object, comprising:

- a. A client (figure 6, column 4, lines 56-58).
- b. A server facility configured to be accessed via an electronic data network by the client and to send data corresponding to at least one portion of a network object to the client via the electronic data network (column 2, lines 14-16; column 4, lines 3-11).
- c. A software delegate residing on the client and configured to control an amount of the data and a size of the at least one portion of the network object to be downloaded from the server facility to the client (column 3, lines 6-10, column 4, lines 1-11).

Although the system disclosed by Bodin et al. (USPN 6,061,733) shows substantial features of the claimed invention, it fails to disclose means wherein download decisions are made independent of the user of the client and based solely upon an operating state of the client.

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Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for the download of data wherein download decisions are made independent of the user of the client and based solely upon an operating state of the client (column 5, lines 13-15, 31-40).

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by making the downloaded portion decisions independent of the user and based solely upon the operating state of the client. This benefits the system by allowing the system to optimize the download of data without requiring intervention by the user.

7. Regarding claim 2, Bodin et al. (USPN 6,061,733) teach all the limitations as applied to claim 1. They further teach means wherein the electronic data network is the Internet (column 1, line 14; column 2, lines 15-17, 59-62).

8. Regarding claim 4, Bodin et al. (USPN 6,061,733) teach all the limitations as applied to claim 1. They further teach means wherein the amount of data is a range of bytes and the size of the at least one portion is dependent on the operating state (column 3, lines 5-15).

9. Regarding claim 5, although the system disclosed by Bodin et al. (USPN 6,061,733) (as applied to claim 1) shows substantial features of the claimed invention, it fails to disclose means wherein the operating state is an idle state.

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Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for download of data over the Internet based on operating state wherein the operating state is an idle state (figure 5). Note that in the reference, data is downloaded when the client is idle.

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by employing the use of the operating system idle time to download data. This benefits the system by providing the user with the best possible performance while active and for a reliable download during downtime.

10. Regarding claim 6, although the system disclosed by Bodin et al. (USPN 6,061,733) (as applied to claim 1) shows substantial features of the claimed invention, it fails to disclose means wherein the operating state is a busy state.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for download of data over the Internet based on operating state wherein the operating state is a busy state (figure 5).

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by employing the stoppage of download when the client is busy. This

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benefits the system by providing the user with the best possible performance while active and for a reliable download during downtime.

11. Regarding claim 13, Bodin et al. (USPN 6,061,733) teach a system for facilitating downloading portions of a remotely located network object with means for:

- a. Using a client computer to access a server facility via an electronic data network (column 2, lines 14-16; column 4, lines 3-11).
- b. Receiving, at the client computer, portions of a network object from the server facility (column 4, lines 3-11).
- c. Storing the portions of a network object within the client computer to create locally a completely downloaded copy of the network object (column 3, lines 44-46).
- d. Controlling a size of the portions of the network object received from the server facility (column 3, lines 6-10; column 4, lines 1-11).

Although the system disclosed by Bodin et al. (USPN 6,061,733) shows substantial features of the claimed invention, it fails to disclose means wherein download decisions are made independent of the user of the client and based solely upon an operating state of the client computer.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Perlman (USPN 6,237,039).

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In an analogous art, Perlman (USPN 6,237,039) discloses a system for the download of data wherein download decisions are made independent of the user of the client and based solely upon an operating state of the client computer (column 5, lines 13-15, 31-40).

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by making the downloaded portion decisions independent of the user and based solely upon the operating state of the client. This benefits the system by allowing the system to optimize the download of data without requiring intervention by the user.

12. Regarding claim 14, Bodin et al. (USPN 6,061,733) teach all the limitations as applied to claim 13. They further teach means wherein the electronic data network is the Internet (column 1, line 14; column 2, lines 15-17, 59-62).

13. Regarding claim 15, Bodin et al. (USPN 6,061,733) teach all the limitations as applied to claim 13. They further teach means wherein the size of the portions of the network object in the controlling step is a range of bytes (column 3, lines 5-15).

14. Regarding claim 16, Bodin et al. (USPN 6,061,733) teach all the limitations as applied to claim 13. They further teach means wherein the size of the portions of a network object in the controlling step is dependent on an operating state of the computer (column 3, lines 5-15).

15. Regarding claim 17, although the system disclosed by Bodin et al. (USPN 6,061,733) (as applied to claim 16) shows substantial features of the claimed invention, it fails to disclose means wherein the operating state is an idle state.



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Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for download of data over the Internet based on operating state wherein the operating state is an idle state (figure 5). Note that in the reference, data is downloaded when the client is idle.

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by employing the use of the operating system idle time to download data. This benefits the system by providing the user with the best possible performance while active and for a reliable download during downtime.

16. Regarding claim 18, although the system disclosed by Bodin et al. (USPN 6,061,733) (as applied to claim 16) shows substantial features of the claimed invention, it fails to disclose means wherein the operating state is a busy state.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for download of data over the Internet based on operating state wherein the operating state is a busy state (figure 5). Note that in the reference, data download is suspended when the client is in use.

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al.

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(USPN 6,061,733) by employing the stoppage of download when the client is busy. This benefits the system by providing the user with the best possible performance while active and for a reliable download during downtime.

17. Regarding claim 19, Bodin et al. (USPN 6,061,733) teach all the limitations as applied to claim 13. They further teach means wherein the controlling step is performed by a software delegate residing on the computer (column 3, lines 5-10).

18. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodin et al. (USPN 6,061,733) and Perlman (USPN 6,237,039) as applied to claim 1 above, and further in view of Young (USPN 6,477,522).

19. Regarding claim 3, although the system disclosed by Bodin et al. (USPN 6,061,733) and Perlman (USPN 6,237,039) (as applied to claim 1) shows substantial features of the claimed invention, it fails to disclose means wherein the software delegate is a Javascript applet.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733) and Perlman (USPN 6,237,039), as evidenced by Young (USPN 6,477,522).

In an analogous art, Young (USPN 6,477,522) discloses a system for downloading of files or portions of file involving a software delegate wherein the software delegate is a Javascript applet (column 2, lines 48-54). Note that in the reference, the applet looks to multiple servers and can download a portion of the file from any.

Given the teaching of Young (USPN 6,477,522), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) and Perlman (USPN 6,237,039) by employing the use of an applet for distribution of

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the software delegate. Applets benefit the system by allowing any type of client to run the application and to access files in portions. The benefits can more easily be distributed to a wide range of users if applets are used.

20. Claims 7-12 rejected under 35 U.S.C. 103(a) as being unpatentable over Bodin et al. (USPN 6,061,733) in view of Perlman (USPN 6,237,039) and Young (USPN 6,477,522).

21. Regarding claim 7, Bodin et al. (USPN 6,061,733) teach A system for downloading portions of a remotely located network object, comprising:

- a. A client (figure 6, column 4, lines 56-58).
- b. A server facility configured to be accessed via an electronic data network by the client and to send data corresponding to at least one portion of a network object to a client via the electronic data network (column 2, lines 14-16; column 4, lines 3-11).
- c. A software delegate capable of residing on the client and configured to control an amount of the data and a size of the at least one portion of the network object to be downloaded from the server facility to the client (column 3, lines 6-10, column 4, lines 1-11).
- d. A client agent, configured to run on an automatic data processing system, to access a storage facility of the automatic data processing system, to access the server facility via the electronic data network to receive data from the server facility via the electronic data network in accordance with the software delegate (column 3, lines 6-10, column 4, lines 1-11).

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Although the system disclosed by Bodin et al. (USPN 6,061,733) shows substantial features of the claimed invention, it fails to disclose means wherein:

- a. Download decisions are made independent of a user of the client and based solely upon an operating state of the client.
- b. The software delegate is received from the server facility.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Perlman (USPN 6,237,039) and Young (USPN 6,477,522).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for the download of data wherein download decisions are made independent of the user of the client and based solely upon an operating state of the client (column 5, lines 13-15, 31-40).

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by making the downloaded portion decisions independent of the user and based solely upon the operating state of the client. This benefits the system by allowing the system to optimize the download of data without requiring intervention by the user.

Further, in an analogous art, Young discloses a system for downloading of files or portions of file involving a software delegate wherein the software delegate is received from the server facility (column 2, lines 48-54). Note that in the reference, an applet is used. Applets are downloaded from the server facility.

Given the teaching of Young, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by

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employing the download of the software delegate from the server facility. This would benefit the system by allowing any client with the proper software to run the application and to access files in portions. The benefits can more easily be distributed to a wide range of users if applets are used.

22. Regarding claim 8, Bodin et al. (USPN 6,061,733) teach all the limitations as applied to claim 7. They further teach means wherein the client agent is an Internet browser and the electronic data network is the Internet (column 1, line 14; column 2, lines 15-17, 59-62).

23. Regarding claim 9, although the system disclosed by Bodin et al. (USPN 6,061,733) (as applied to claim 7) shows substantial features of the claimed invention, it fails to disclose means wherein the software delegate is a Javascript applet.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Young (USPN 6,477,522).

In an analogous art, Young discloses a system for downloading of files or portions of file involving a software delegate wherein the software delegate is a Javascript applet (column 2, lines 48-54). Note that in the reference, the applet looks to multiple servers and can download a portion of the file from any.

Given the teaching of Young, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by employing the use of an applet for distribution of the software delegate. Applets benefit the system by allowing any type of client to run the application and to access files in portions. The benefits can more easily be distributed to a wide range of users if applets are used.

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24. Regarding claim 10, Bodin et al. (USPN 6,061,733) teach all the limitations as applied to claim 7. They further teach means wherein the amount of data is a range of bytes and the size of at least one portion is dependent on the operating state (column 3, lines 5-15).

25. Regarding claim 11, although the system disclosed by Bodin et al. (USPN 6,061,733) (as applied to claim 7) shows substantial features of the claimed invention, it fails to disclose means wherein the operating state is an idle state.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for download of data over the Internet based on operating state wherein the operating state is an idle state (figure 5). Note that in the reference, data is downloaded when the client is idle.

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by employing the use of the operating system idle time to download data. This benefits the system by providing the user with the best possible performance while active and for a reliable download during downtime.

26. Regarding claim 12, although the system disclosed by Bodin et al. (USPN 6,061,733) (as applied to claim 7) shows substantial features of the claimed invention, it fails to disclose means wherein the operating state is a busy state.

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Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Bodin et al. (USPN 6,061,733), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for download of data over the Internet based on operating state wherein the operating state is a busy state (figure 5).

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Bodin et al. (USPN 6,061,733) by employing the stoppage of download when the client is busy. This benefits the system by providing the user with the best possible performance while active and for a reliable download during downtime.

### *Conclusion*

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Parton whose telephone number is (703)306-0543. The examiner can normally be reached on M-F 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (703)305-4792. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

Kevin Parton  
Examiner  
Art Unit 2153

ksp



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